

## **PUBLIC INFORMATION CLAIM EXAMINATION FAQ's**

**WHAT IS A WATER RIGHT?** The State of Montana owns the waters within the state. A recorded water right provides the owner of the right with a legal right to use the water. The vast majority of water uses in Montana are required by law to have a recorded water right for the use of the water to be valid, legal, and defensible against other water users.

**WHAT GOOD IS A WATER RIGHT?** Having a water right recorded with the DNRC protects the use of that water right from other users with rights later in date, and from illegal unrecorded uses of water. It also allows the state to provide notice to a water right owner of water issues that could adversely affect the owner's use of their water right. If there is a dispute about water use, the recorded rights are defensible against illegal, unrecorded uses of water.

**HOW LONG DOES A WATER RIGHT LAST?** It lasts until it is withdrawn by the owner, or abandoned by the owner, or terminated by a court. DNRC has no authority to change or terminate claims to existing water rights without the written authorization of the owner of the water right. The Water Court will generally not terminate a claim to an existing water right unless an owner fails to come forward to defend a claim that either has been objected to, or has issues resulting from the adjudication examination process.

**HOW IS OWNERSHIP OF A WATER RIGHT DETERMINED?** Generally, the water right belongs to the owner of the land where the water is used. Legal ownership of a water right changes when the land is conveyed to a new owner. When lands are conveyed, the deed or instrument of conveyance is recorded at the Clerk and Recorder's Office in the County where the land is located. However, this recording is insufficient to update the state ownership records for the water rights on the property. One or both of the parties to the land conveyance are required by law to file an Ownership Update with DNRC to update the ownership records for the water rights. Failure to update the ownership records puts the water rights in limbo, without a proper record owner to defend the water rights if need be.

**WHAT ARE STATEMENTS OF CLAIMS TO EXISTING WATER RIGHTS?** They are filed water rights that were first used prior to July 1, 1973, and therefore have priority dates or dates of first use before 7/1/1973. These old water rights were required by law to be filed with the state by April 30, 1982, or by July 1, 1996 for late filed claims. These claims are protected by the laws that existed before July 1, 1973, when Montana passed the current Water Use Act. Any old water rights that were not filed by these deadlines are presumed to be abandoned unless they qualify as exempt uses. Water rights developed after 7/1/1973 by law must be applied for through a DNRC permitting process in order for the owner to obtain a valid, legal right to use the water.

**WHAT IS THE DIFFERENCE BETWEEN A PERMIT, A CERTIFICATE OF WATER RIGHT, AND A STATEMENT OF CLAIM FOR A WATER RIGHT?** Statements of Claim are for all pre July 1, 1973, uses of water. Permits and Certificates are for post 7/1/1973 uses of water. A Certificate is for developed groundwater use of less than 35 Gallons Per Minute (GPM), generally wells and springs. A permit is for groundwater uses greater than 35 GPM and

all surface water uses. Only Statements of Claim are subject to the adjudication and examination process.

**WHAT IS A PRIORITY DATE?** It is the date the water right was first put to use. That date is important in Montana because the earlier the priority date, the more senior the right is. If you have a senior right, you are more likely to receive your water during the times that you use it. If your priority date is junior to other users, the senior users can put out a call on your right, asking you to discontinue using your right when there is insufficient water for all valid rights.

**HOW DO I FIND OUT IF I HAVE A WATER RIGHT?** First of all you need to determine if you use water from a source other than a municipality or an Irrigation District.

- Do you get all of your water from the city? If so, then you won't have or need a water right. The city you get your water from has and owns the water rights from which it supplies your water.
- Do you get water from an Irrigation District or Association? If so, like a municipality, the District or Association owns the water rights from which it supplies your water.
- Do you have a private well for domestic uses and to water your lawn? If so, then you may, or may not have a recorded water right for your well. If your well is older than 7/1/1973 and a Statement of Claim was filed for it, you may have a Statement of Claim. If your well was developed after 7/1/1973 and a right was filed for it, you may have a Groundwater Certificate. In either case, you should have copies of such filings in your possession. If you can't find your copies you can check with your local DNRC Regional Office.
- If your well and water use qualify as an exempt right, no filing may have yet been made for such use. Again, check with your local DNRC Regional Office.
- If you use surface water, such as from a stream, river, lake, reservoir, or developed spring, there must be a recorded water right for the use to be valid. Again, contact your local DNRC Regional Office to locate the right in DNRC Records.
- You can also go to the DNRC Website under Water, and link to the Natural Resources Information System (NRIS) which lists all of the water rights recorded with the DNRC.

**I FILED MY CLAIMS ALMOST 30 YEARS AGO. WHY HAS THIS TAKEN SO LONG?** Over 200,000 claims were filed statewide by April 30, 1982. Each claim is required to be examined by very specific laws and Supreme Court rules to ensure that the information in the claim is conveyed to the water court as consistently and accurately as possible. There have been many legislative and judicial concerns over the last almost 30 years that have slowed the process.

**I HAVE A CERTIFICATE FOR MY WELL. MY NEIGHBOR HAS AN OLD WELL AND HE SAYS HE HAS NEVER HAD TO FILE ANY PAPERWORK FOR IT. WHY IS THAT?** Any well for domestic or stockwater use that was first put to use prior to 1962, or between '62 and '73 and was filed at the local court house, was exempt from the claim filing process. Such claims could be voluntarily filed for these uses. Some were filed, and some not.

**WILL MY GROUND WATER CERTIFICATE/PERMIT BE EXAMINED IN THIS ADJUDICATION WATER RIGHTS?** No, only Statements of Claim, the old (pre-1973) water rights, are required to be examined by the DNRC as part of the adjudication process.

There are additional FAQ's posted on the DNRC Website. Go to Water, then Water Rights Information, then to Adjudication Information, then to HB 22 Adjudication Information – **What is Adjudication?**, and then to the FAQ's. Under FAQ's, see questions in sections: III. (about DNRC); IV. (about the claim examination process); V. (about the Water Court); VI. (about the adjudication process); VII. (about specific questions about water rights); and VIII. (about other places to find information).